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12 SALARY CONTINUANCE AND LONG TERM
DISABILITY PLAN; KAISER FOUNDATION HEALTH PLAN
KAISER PERMANENTE SALARIED RETIREMENT PLAN

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UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA

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25 Pursuant to Federal Rules of Court Procedure 16(b) and the Court's "Case

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1 Management Conference Order" the parties to the above entitled action jointly submit this
2 case management statement:

3 1. Jurisdiction and Service:

4 The parties agree that this Court has subject matter jurisdiction over Plaintiff's claim
5 pursuant to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"),
6 29 U.S.C. section 1132(a). Jurisdiction is proper pursuant to 29 U.S.C. section 1331
7 because this action arises under the laws of the United States of America. 29 U.S.C.
8 section 1132(e)(1) provides for Federal District Court jurisdiction.

9 All parties are subject to this Court's jurisdiction.

10 All parties have been served.

11 2. Facts

12 A. Plaintiff's Facts

13 Plaintiff Linda Holt ("Plaintiff") was formerly employed by Kaiser Permanente and
14 participated in the Salary Continuance and Long Term Disability Plan; Kaiser Foundation
15 Health Plan; Kaiser Permanente Salaried Retirement Plan ("The Plans"). The LTD Plans
16 benefits are insured through a group insurance policy issued by Metropolitan Life
17 Insurance Company ("MetLife"), which also acted as claims administrator. After Plaintiff
18 ceased working, she made a claim for long-term disability ("LTD") benefits; MetLife
19 accepted her claim and paid her through August 2006, at which time MetLife terminated
20 her claim, concluding that Plaintiff did not meet The Plan terms to receive benefits. The
21 health insurance and retirement benefits ceased as a result of this termination, without
22 notifying her of her right to appeal. Plaintiff exhausted all internal administrative remedies
23 required by the terms of The Plans.

24 B. Defendants' Facts

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JOINT CASE MANAGEMENT STATEMENT
~2~ CASE NO.: 07-4656 MJJ

1 Plaintiff Linda Holt was employed by Southern California Permanente Medical
2 Group (“SCPMG”). She participated in each of the Plans described above (referred to
3 herein as “the LTD Plan,” “the Health Plan,” and “the Retirement Plan,” respectively).
4 MetLife is the funding source and the claim administrator for the LTD Plan.

5 Plaintiff ceased working on January 2, 2001, due to pain in her neck and arm, which
6 her attending physician diagnosed as cervical radiculitis. On September 4, 2001, she
7 submitted a claim for LTD benefits, stating that she was unable to perform her job duties
8 because pain prevented her from sitting and using a computer. On December 13, 2001,
9 MetLife approved her claim.

10 Because of Plaintiff’s approval for LTD Plan benefits, her premiums for continued
11 participation in the Health Plan were waived. Similarly, while she was receiving LTD Plan
12 benefits, Plaintiff continued to accrue years of service under the Retirement Plan.
13 However, under the terms of both the Health Plan and the Retirement Plan, premium
14 waiver and continued accrual of credited service years, respectively, were available only
15 as long as Plaintiff was receiving LTD Plan benefits.

16 MetLife determined that Plaintiff no longer was eligible for LTD benefits, effective
17 August 1, 2006. It made that adjudication after receiving an Attending Physician’s
18 Statement that disclosed that Plaintiff was able to return to work with no restrictions or
19 limitations.

20 Plaintiff appealed the discontinuation of LTD Plan benefits. MetLife conducted a full
21 and fair review of her claim on appeal and, as part of that review, submitted her complete
22 file to Dr. Vernon Mark, an independent physician consultant (“IPC”) who is board certified
23 in neurosurgery. The IPC opined that the file did not contain specific clinical findings
24 sufficient to support a finding of disability after July 31, 2006. Although the clinical record
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1 showed that Plaintiff had made subjective complaints of pain, the record was devoid of any
2 objective neurological information obtained within the last three years showing a functional
3 impairment such as to justify restrictions or limitations. As such, MetLife credited the IPC's
4 opinions and upheld adjudication of the claim.

5 Plaintiff subsequently contacted MetLife and stated that she believed MetLife had
6 not received all of her medical records. She was permitted to provide additional medical
7 information, which MetLife reviewed and forwarded to the IPC. Following a review of the
8 supplemental medical records, Dr. Mark opined that the file nevertheless did not show that
9 Plaintiff was unable to work in any occupation in the local economy. Although the records
10 showed some degenerative changes in her spine, Dr. Mark opined that such changes are
11 common, and do not automatically cause functional impairment. MetLife again upheld the
12 denial of benefits. This lawsuit followed.

13 3. Legal Issues in Dispute

14 Plaintiff's Statement

15 A. Whether evidence outside the administrative record is admissible regarding
16 standard of review and/or the merits.

17 B. Whether Plaintiff was totally disabled under the terms of The LTD Plan.

18 C. Whether Plaintiff is entitled to LTD benefits, and, if so, what amount of back
19 benefits are owed.

20 D. Whether The Plan is estopped to deny that Plaintiff is entitled to benefits by
21 virtue of Plaintiff's receipt of Social Security Disability benefits and The LTD
22 Plan's consequent reduction of benefits paid to Plaintiff.

23 Defendants' Statement

24 The primary legal issue in dispute is whether MetLife as the LTD Plan's claim

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1 administrator abused its discretion in determining that Plaintiff was not disabled as of
2 August 1, 2006. Defendants recognize, however, that Plaintiff has raised additional legal
3 issues, set out above, which the Court will resolve in the course of determining whether
4 there was an abuse of discretion. Defendants dispute that such issues are capable of
5 being resolved in Plaintiff's favor, under the applicable law.

6 4. Motions:

7 There are currently no motions pending.

8 Plaintiff does not anticipate filing any motions, unless there is a dispute over
9 discovery.

10 Defendants intend to file a motion for summary judgment, to dispose of Plaintiff's
11 claims short of trial. If Plaintiff contends that discovery is appropriate and/or that the Court
12 may consider evidence outside the administrative record, it is Defendant's position that
13 Plaintiff must make a motion for leave to conduct discovery, and for a ruling on the scope
14 of discovery which the Court will permit and/or the scope of extra-record evidence which
15 the Court will consider.

16 5. Amendment of Pleadings

17 Parties do not anticipate submitting amended pleadings.

18 6. Evidence Preservation

19 Defendants have preserved all evidence which appears to pertain to this dispute.
20 Further, Defendants will provide the administrative record with regard to the LTD Plan
21 claim to Plaintiff.

22 7. Disclosures

23 The parties have committed to full disclosure on or before the date of the Case
24 Management Conference, February 26, 2008.

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1 Defendants assert that Rule 26(a)(1)(E)(i) of the Federal Rules of Civil Procedure
2 explicitly exempts actions for review on an administrative record from initial disclosures.
3 However, in order to avoid unnecessary delay and expense, and without waiving the
4 applicability of Fed. R. Civ. P. 26(a)(1)(E)(i) to the instant case, which will be decided on
5 the administrative record, Defendants have agreed to make initial disclosures.

6 8. Discovery

7 Plaintiff's position

8 No discovery has taken place to date.

9 Plaintiff contends that the Administrative Record should include MetLife's claims
10 manuals.

11 Plaintiff intends to conduct discovery regarding the nature, extent, and effect on the
12 decision making process of MetLife's conflict of interest because such information is
13 relevant in assessing whether it abused its discretion. Plaintiff intends to serve: request
14 for production of documents, interrogatories, and notice a Rule 30(b)(6) of MetLife.

15 Plaintiff believes a Rule 26(f) discovery order and conference is necessary.

16 Defendants' position

17 Plaintiff does not explain what discovery she would seek, or on what subjects (e.g.,
18 Plaintiff intends to seek "a Rule 30(b)(6)" on unidentified subjects). The mere existence of
19 a structural conflict of interest (where, as here, the claim fiduciary is also the funding
20 source for the Plan), however, does not in itself warrant broad discovery of the sort Plaintiff
21 apparently proposes; contrary to Plaintiff's approach, a structural conflict is not a fishing
22 license.

23 If an administrative claims decision is reasonable in light of the record, courts will
24 find no abuse of discretion. *Jordan v. Northrop Grumman Corp. Welfare Benefit Plan*, 370

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1 F.3d 869, 875 (9th Cir. 2004). Unless Plaintiff is able to show that the denial of her claim
2 was unreasonable in light of the administrative record, discovery would merely drag out
3 the litigation in defiance of ERISA's goal of inexpensive and expeditious dispute resolution,
4 while providing no helpful information. *Abatie*, which has defined this Circuit's law on
5 conflict of interest, is not to the contrary – indeed, it does not discuss discovery at all.
6 Unless or until Plaintiff can demonstrate that she seeks discovery that is relevant to bias
7 on MetLife's part, no discovery should be permitted – and if any discovery is to be
8 permitted, it should be carefully tailored so that it will not be expensive and burdensome.

9 In no event should the Court authorize discovery as to the merits of Plaintiff's claim.
10 Abuse of discretion review of the merits of a decision is limited to facts set forth in the
11 administrative record. *Taft v. Equitable Life Assurance Society*, 9 F.3d 1469, 1470 (9th Cir.
12 1993). Thus, no discovery would be appropriate on the subject of the claim handling
13 process, because Plaintiff's own claim either was, or was not, properly decided under the
14 LTD Plan. Any attempt to obtain discovery into the mental processes of the persons who
15 analyzed the claim, still less any attempt to obtain discovery about claims of others, sheds
16 no light on that issue, but merely distracts from the issue actually presented. See *Semien*
17 *v. Life Ins. Co. of North America*, 436 F.3d 805 (7th Cir. 2006). As a matter of public
18 policy, the *Taft* court observed that permitting a court to examine evidence outside the
19 administrative record potentially would open the door to the anomalous conclusion that a
20 fiduciary had abused its discretion by failing to consider evidence that was not before it.
21 *Id.* at 1472. The *Taft* court explained that permitting introduction of evidence outside the
22 administrative record is inconsistent with the primary goal of ERISA, which is to provide a
23 method for workers and beneficiaries to resolve disputes over benefits inexpensively and
24 expeditiously. *Id.*

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1 The Ninth Circuit affirmed its *Taft* holding in *McKenzie v. General Tel. Co.*, 41 F.3d
 2 1310, 1314 (9th Cir. 1994), *cert. denied*, 514 U.S. 1066 (1995). As in *Taft*, the Ninth
 3 Circuit held that a court may not consider “new evidence,” which was not part of the
 4 administrative record, in deciding the merits of the claim. The court also held that under
 5 the abuse of discretion standard, a court may review only evidence which was before the
 6 fiduciary making the decision. *Id.* at 1316. The Ninth Circuit in *McKenzie* thus found that
 7 the trial court erred in relying on evidence never presented to the claim fiduciary, which
 8 was not in the administrative record but had been submitted directly to the court. *Id.*; see
 9 also *Alford v. DCH Found. Group Long-Term Disability Plan*, 311 F.3d 955, 959 (9th Cir.
 10 2002) (documents that were neither “presented to” nor “considered by” fiduciary in
 11 reaching its decision not included in record in district court, where the review is for abuse
 12 of discretion).

13 In short, if any discovery is to be permitted – which MetLife disputes – it should be
 14 narrowly tailored to the issue of conflict, and should not extend to merits-related questions
 15 such as the bases or reasons for the claim decision.

16 9. Class Actions:

17 This is not a class action lawsuit.

18 10. Related Cases

19 There are no other related cases.

20 11. Relief:

21 Plaintiff's position

22 This is a complaint for declaratory relief. Plaintiff requests that back benefits be
 23 paid with 10% interest.

24 Plaintiff is entitled to \$2,238 per month after her benefit is reduced by Social

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1 Security Disability Insurance.

2 Defendant terminated benefits August 2006.

3 Therefore, she is entitled to 18 months of back benefits at \$2,238 per month at 10%
4 interest of \$18.65 per month: $2,238 \times 18 + 335.70 = \$40,619.70$, plus ongoing monthly
5 benefits until Plaintiff turns 65 or is no longer disabled under the terms of the Plans.

6 Defendant's position

7 Defendants dispute that Plaintiff is entitled to any relief. Should the Court
8 determine that benefits are owed under the LTD Plan, the claim should be remanded to the
9 claim administrator for calculation of such benefits, including any applicable offsets.

10 Defendants further dispute that, in the event benefits were to be awarded,
11 prejudgment interest would be computed at the rate apparently demanded by plaintiff;
12 prejudgment interest is set by federal law (28 U.S.C. § 1961), and is substantially less than
13 10 percent.

14 12. Settlement and ADR:

15 The parties have agreed to participate in a private mediation. The parties suggest
16 that the mediation deadline be May 30, 2008.

17 13. Consent to Magistrate Judge for All Purposes

18 The parties do not consent to the assignment of this case to a United States
19 Magistrate Judge for trial.

20 14. Other References

21 This case is not suitable for binding arbitration, a special master, or the Judicial
22 Panel on Multidistrict Litigation.

23 15. Narrowing of Issues:

24 Not applicable at this time.

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1 16. Expedited Schedule:

2 Not applicable.

3 17. Scheduling:

4 The parties have agreed to participate in mediation. Failing agreement in
5 mediation, the Defendant intends to file a dispositive motion. Thereafter, the matter will be
6 ready for trial.

7 18. Trial

8 This case is a bench trial and is expected to last two hours.

9 19. Disclosure of Non-party Interested Entities or Persons:

10 Plaintiff has made its Certification of Non-Party Interested Entities or Persons, as

11 1. Plaintiff;

12 2. Defendant Salary Continuance and Long Term Disability Plan;

13 Defendant Kaiser Foundation Health Plan; and Defendant Kaiser
14 Permanente Salaried Retirement Plan.

15 3. Defendants' insurers, including Metropolitan Life Insurance Company..

16 Defendants have also made their Certification, identifying the following as Non-

17 Party Interested Entities: MetLife; Salary Continuance and Long Term Disability Plan;

18 Kaiser Foundation Health Plan, Inc.; and Kaiser Permanente Salaried Retirement Plan.

19 MetLife is a subsidiary of MetLife Inc., a publicly traded corporation.

20 20. Other Matters

21 There are no other matters.

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23 Dated: February 11, 2008

/s/

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THORNTON DAVIDSON
Attorney for Plaintiff,
LINDA HOLT

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3 Dated: February 11, 2008

/s/

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